FORGEY RANCH CO.
v.
BUREAU OF LAND MANAGEMENT

IBLA 89-117 Decided August 27, 1990

Appeal from a decision of Administrative Law Judge Ramon M. Child, affirming decision of the Platte River Resource Area Manager, Casper District, Bureau of Land Management, denying an application for a grazing lease. WY-062-87-1(15).

Affirmed.

1. Grazing and Grazing Lands--Grazing Permits and Licenses: Adjudication--Grazing Permits and Licenses: Appeals

An Administrative Law Judge's decision adjudicating grazing privileges will not be set aside on appeal if
it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100.

APPEARANCES: Craig Newman, Esq., Casper, Wyoming, for appellant; Glenn F. Tiedt, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Forgey Ranch Company (FRC) has appealed from a decision of Administrative Law Judge Ramon M. Child, dated October 26, 1988. Judge Child's decision affirmed a decision issued by the Platte River Resource Area Manager, Casper District, Bureau of Land Management (BLM), dated July 17, 1987, denying FRC's application for a grazing lease in the McPherson Draw area within the Antelope Hills allotment. The stated reasons for BLM's initial decision were that the lands that FRC had offered as base property no longer qualified as base property because the grazing privileges had been transferred from Van Irvine to Metropolitan Life Insurance Company (Metropolitan) and a lease for the Antelope Hills allotment had already issued to Metropolitan.

FRC appealed the Resource Area Manager's decision pursuant to 43 CFR 4160.4 and the case was argued before Administrative Law Judge Child in a hearing held on July 26, 1988, at Casper, Wyoming. Prior to the hearing, the parties agreed to a joint stipulation of facts which the Judge incorporated into his decision at pages 3-4 and which we also adopt for the purposes of this decision as Appendix 1.

The record shows that the BLM grazing preference in the Antelope Hills allotment was transferred from the original base properties to other base properties in March 1985 when Lee Irvine (Flying Diamond Ranch Corporation) made application to transfer all interest in BLM grazing leases GR-6075, GR-6552, and GR-6306 (which included the grazing preference for the Antelope Hills pasture), to Metropolitan after the Irvine Ranches were apparently foreclosed on by Metropolitan (Tr. 61). The transfer was approved by BLM on March 19, 1985. On April 11, 1985, BLM issued Metropolitan a grazing lease for the Antelope Hills pasture for the period ending February 28, 1990 (Stipulated Fact No. 3).

A BLM summary of chronology in the record reflects that during the winter of 1985/1986, Metropolitan indicated to BLM that they did not want
to use the Antelope Hills pasture because of the various private lands that they did not own or control in the pasture and the problems that could occur there. All the private lands in the pasture were subdivided to be sold for home sites. BLM did not charge Metropolitan grazing fees for this allotment in 1986 or 1987. Metropolitan paid $7,981.20 grazing fees for the period March 1, 1986, to February 28, 1987, and that same amount for the period March 1, 1987, to February 28, 1988. The grazing bills for these periods show that BLM was aware of and acknowledged that the leased Animal Unit Months (AUM's) in this allotment were not scheduled for use during these periods (Stipulated Facts No. 4 and 6; Tr. 71). The record also confirms that Metropolitan or its authorized representatives did not graze livestock on Federal lands in the Antelope Hills pasture during the periods in question (Stipulated Fact No. 14).

On March 2, 1987, B. B. Brooks Company (Brooks) applied for the grazing preference in the Antelope hills pasture using their adjoining private lands as base property. BLM issued Brooks a lease on March 8, 1987 (GR-6058), for 760 AUM's which was subsequently cancelled June 23, 1987, with BLM noting that the lease had erroneously issued because the grazing preference had still been included in a prior grazing lease No. 6552 held by Metropolitan (Stipulated Fact No. 9).

On April 3, 1987, FRC applied for a transfer of grazing preference in the Antelope Hills allotment from Mick Irvine, Van Irvine, and James and Phyliss Wilkinson (Stipulated Fact No. 7). FRC had purchased private lots in the Antelope Hills from this group, thinking that they had also acquired the grazing rights to the BLM land along with the deeded land.

On May 20, 1987, Metropolitan applied to BLM to transfer the grazing preference in the Antelope Hills allotment to Brooks, confirming earlier indications from correspondence that Metropolitan intended to sell Brooks 138 acres around the Daly Reservoir in the allotment area. Although Metropolitan and Brooks had reached agreement on this course of action in the beginning of May, Brooks did not file the application for transfer and the deed with BLM until June 23, 1987 (Stipulated Fact No. 8). BLM subsequently approved the transfer of the grazing preference in the Antelope Hills allotment to Brooks on September 7, 1987 (Stipulated Fact No. 8).

FRC's application for grazing use in the Antelope Hills allotment was ultimately rejected by BLM by decision of July 17, 1987, because of Metropolitan's prior lease of the same land and because of FRC's loss of qualified base property. FRC has objected to the Bureau's action, filing this appeal with the Board. In its statement of reasons (SOR), FRC con-tends the Administrative Law Judge erred in affirming BLM's action because Metropolitan was not a qualified transferee of the grazing preference/lease at issue at the time of the transfer in 1985, and did not become so qualified within 2 years of March 19, 1985. It asserts, inter alia, Metropolitan was neither a "corporation authorized to conduct business in the state in which the grazing use is sought," nor engaged in the livestock business, citing 43 CFR 4110.2-3(a)(i) and 43 CFR 4110.1 (Oct. 1, 1987). FRC charges that Metropolitan did not "file with the authorized officer a properly completed transfer application in advance for approval," pursuant to 43 CFR 4110.2-3(c), for the transfer of grazing preference from one base property to another. Nor, FRC asserts, did it file an application for non-use of a grazing permit or lease with the authorized officer of the local BLM office having jurisdiction over the lands involved pursuant to 43 CFR 4130.1. FRC maintains that Metropolitan should also have filed an application for change in grazing use with the authorized officer before the billing notice for the affected grazing use had been issued pursuant to 43 CFR 4130.1-1(a) (SOR at 5-6).

FRC further charges that Metropolitan clearly did not make use of the grazing preference at issue for 2 consecutive fee years, and the authorized officer should, under the circumstances of this case, have initiated cancellation proceedings pursuant to 43 CFR 4140.1(a)(ii). FRC contends BLM, when presented with the application for transfer from Metropolitan to Brooks, should have treated the FRC application and the Brooks application as conflicting, and taken subsequent action to determine the party entitled to the preference (SOR at 6-7).

Finally, FRC contends that its appeal of the BLM decision on its application concerning the grazing preference/lease at issue should have suspended the effect of that decision pending a final action on the appeal pursuant to 43 CFR 4.477(a), and thereby preventing BLM from subsequently approving a transfer of the grazing preference at issue from Metropolitan to Brooks on September 7, 1988.

BLM has responded that Metropolitan is a qualified corporation authorized to do business with the State of Wyoming within the meaning of 43 CFR 4110.1 (c) and is clearly engaged in the livestock business stating:

> The Wyoming insurance commissioner has authorized Metropolitan Life Insurance Company to "transact insurance" in the State, and his authorization is the only one needed for Metropolitan to do business in Wyoming. Since there is no requirement in 43 C.F.R. § 4110.1(c) that a corporation's authority to conduct business in a State be under any particular provision of State law,

> Metropolitan is a corporation authorized to do business in Wyoming within the meaning of the regulation.

(BLM Response at 2-3).

As for FRC's challenge of Metropolitan's ability to engage in the livestock business in Wyoming, BLM responds that this charge fails to overcome extensive evidence presented in the hearing that Metropolitan has actually been engaged in the livestock business in three States, Oregon, Montana, and Wyoming, for a number of years. BLM notes that the size of Metropolitan's livestock business is, in fact, several times greater than the size of the operations of FRC and Brooks combined (BLM Response at 3-4).

BLM concludes that this livestock activity must be recognized, stating:

> The question of whether a corporation is engaged in the livestock business is factual, not legal, and it is inconceivable that a corporation the size of Metropolitan Life Insurance Company could engage in a multistate, multimillion dollar enterprize in violation of the laws of its State of incorporation and of the laws of the States in which it was operating without being challenged by any State authorities.

(BLM Response at 4).

BLM maintains that in view of the circumstances its approval of the transfer of grazing privileges from Flying Diamond Ranch Corporation to Metropolitan on March 19, 1985, was reasonable and proper (Jt. Exh. 1). Moreover, Metropolitan's yearly payments of nearly $8,000 annually in grazing fees evidenced its continuing activity in the business (BLM Response at 4).

BLM, therefore, concludes the decision to deny the transfer to FRC from the Flying Diamond Ranch Company of the grazing preference in the Antelope Hills pasture because such preference was held by Metropolitan was fully supported by the applicable regulations. BLM points out that the decision should be affirmed following the mandate of 43 CFR 4.478(a) which provides, "No adjudication of grazing preference will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4100 of this title" (BLM Response at 5).

As to the charge that Metropolitan's grazing preference was subject to cancellation under 43 CFR 4170.1-2 because it did not graze livestock within the Antelope Hills pasture for 2 consecutive years, BLM supports Metropolitan's actions, indicating it was aware of Metropolitan's intended inactivity in the pasture. BLM explains Metropolitan deferred grazing because of the fragmented ownership pattern in the pasture and the temporary nonuse avoided potential conflicts with other landowners in the area. BLM concurred with this decision not to graze as evidenced by the grazing bills for 1986 and 1987 showing 848 AUM's were not scheduled. BLM concludes that these circumstances did not render the preference subject to cancellation

under the regulations, stating: "Since Metropolitan did not pay for their use, their use was not authorized. Any attempt by BLM to cancel grazing preference for nonuse during a period for which use was not authorized would be arbitrary and capricious and contrary to law" (BLM Response at 5-6).

As to FRC's final argument that its appeal should have suspended the effect of the BLM decision under 43 CFR 4.477(a), preventing BLM from approving the conflicting transfer of grazing preference to Brooks, BLM responds that neither Metropolitan nor Brooks were parties to the FRC application, and FRC did not apply for a separate transfer of grazing preference from Metropolitan. Since the two applications were separate
and distinct and not in conflict, BLM asserts, 43 CFR 4.477(a) did not
bar BLM approval of a transfer to Brooks (BLM Response at 7).

[1] Implementation of the Taylor Grazing Act of June 28, 1934 (the Act), as amended, 43 U.S.C. §§ 315, 315a-315r (1982), is committed to the discretion of the Secretary of the Interior. Claridge v. Bureau of Land Management, 71 IBLA 46 (1983). For grazing districts on public lands, section 2 of the Act charges the Secretary to "make such rules and regulations" and to "do any and all things necessary * * * to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range * * *." 43 U.S.C. § 315a (1982). The Federal Land Policy and Management Act of 1976, amended the Taylor Grazing Act and reiterated the Federal commitments to the protection and improvement of Federal range lands. See 43 U.S.C. §§ 1751-1753 (1982).

An adjudication of grazing privileges will not be set aside on appeal, if the decision is found to be reasonable and substantially complies with the Act and Departmental grazing regulations set forth in 43 CFR Part 4100. 43 CFR 4.478(b); Auge v. Bureau of Land Management, 76 IBLA 83 (1983). Similarly, if a decision rendered by an Administrative Law Judge in review of
a BLM grazing decision is reasonable and substantially complies with the applicable regulations, then that decision will not be modified on appeal. See Webster v. Bureau of Land Management, 97 IBLA 1 (1987).

In this instance we have reviewed the arguments on appeal in conjunction with the facts of record and have determined that Judge Child's decision is reasonable and substantially complies with the applicable regulations.

Appellant's main contention that Metropolitan should not have been granted the grazing preference because it did not meet the regulatory requirements as a corporation authorized to conduct business in Wyoming
and also was not properly engaged in the livestock business are not proven by either the evidence developed at the hearing or by any documentation presented with this appeal. Metropolitan is clearly licensed and autho-rized to conduct its insurance business within the State of Wyoming and has been conducting that business within the State for some time. Appellant cites the Wyoming Insurance Code as a legal limitation to Metropolitan's ability to carry on its livestock operation for within the State. However,

Metropolitan has obviously engaged in a sizeable livestock operation for a substantial period in Wyoming without interference from State authorities. Moreover, the regulation cited by FRC, i.e., 43 CFR 4110.1(c) does not specify that a corporation's authority to conduct business within a state must be granted under any particular provision of state law. 1/ Accordingly, we find that Metropolitan is properly authorized to do business in the State of Wyoming within the purview of the meaning of this regulation.

Similarly, we find that the evidence presented fails to support appellant's charge that Metropolitan is not engaged in the livestock business in Wyoming. As BLM has pointed out, Metropolitan has been actively involved in such a business in the three states of Oregon, Montana, and Wyoming for some time. The testimony of John Stratman, an assistant manager of the Northwest Branch Office of the company, confirmed that the company owns or controls approximately 8,000 head of producing mother cows in Montana (Tr. 51), 12,000 mother cows in Oregon, and another 6,000 in Wyoming (Tr. 52-53). Further testimony revealed that the company holds BLM grazing leases for 5,000 to 10,000 AUM's in Montana, and approximately 50,000 AUM's in Oregon (Tr. 52), in addition to its leases in Wyoming (Tr. 52). Stratman also indicated the company's livestock operations generated over $7 million in revenue in the past 12 months (Tr. 53), and the company is engaged in the livestock business for profit (Tr. 60). Metropolitan has 12 brands registered under the name of ZX Land and Cattle Company, an assumed busi-ness name under which the company operates in Oregon (Tr. 55-56; Respondent's Exh. 1), and two brands registered in Montana under the name of Transmountain Land and Livestock Company, a wholly owned subsidiary of Metropolitan (Tr. 57-58); Respondent's Exh. 2). The two Montana brands are used on the company's cattle in Wyoming (Tr. 58). Also, Stratman indicated the livestock grazed on the company's lands in Wyoming come from the company's other ranches in Montana and Oregon.

Therefore, we find Judge Child's decision proper under the circumstances of this case. BLM's decision to deny the transfer to FRC from the Flying Diamond Ranch Company of the grazing preference in the Antelope Hills pasture because such preference was already held by Metropolitan is fully supported by the applicable regulations and will not be set aside on appeal.

To the extent appellant has raised arguments which we have not specifically addressed herein, they have been considered and rejected.

1/ This regulation specifically provides:

"§ 4110.1 Mandatory qualifications.

"Except as provided under §§ 4110.1-1, 4130.3 and 4130.4-3, to qualify for grazing use on the public lands an applicant must be engaged in the livestock business, must own or control land or water base property, and must be:

* * * * * * *

"(c) A corporation authorized to conduct business in the State in which the grazing use is sought."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

APPENDIX 1

Stipulated Facts
(Tr. 7-14)

1. On March 19, 1985, the respondent approved the transfer of the grazing preference at issue from Flying Diamond Ranch Corporation to Metropolitan. The document requesting said transfer was signed by Lee Irvine on behalf of the transferror.

The grazing preference which until then had been associated with property retained by the Irvines within the Antelope Hills pasture was transferred to other properties owned by Metropolitan outside the Antelope Hills pasture (Joint Exh. 1).

2. On March 22, 1985, Metropolitan certified it was a corporation authorized to conduct business in Wyoming and that it controls all livestock that will graze on the lands identified in the grazing permit (Joint Exh. 2).

3. On April 11, 1985, respondent issued Metropolitan a grazing lease for the period ending February 28, 1990 (Joint Exh. 3).

4. On March 24, 1986, Metropolitan paid $7,981.20 for grazing fees for the period beginning March 1, 1986, and ending February 28, 1987. Metropolitan paid no grazing fees for the Antelope Hills pasture because the leased AUM's were not scheduled for use as appears on the face of the exhibit (Joint Exh. 4).

5. On March 2, 1987, B.B. Brooks Company (Brooks) applied for lease of the grazing preference in question and this application was erroneously approved by respondent on March 8, 1987 (Joint Exh. 5).

6. On March 5, 1987, Metropolitan paid $7,981.20 for grazing fees for the period beginning March 1, 1987, and ending February 28, 1988. Again Metropolitan paid no grazing fees for the Antelope Hills pasture because the leased AUM's were not scheduled for use (Joint Exh. 6).

7. On April 3, 1987, Forgey Ranch Company (Forgey or appellant) applied for a transfer of grazing preference from Mick Irvine, Van Irvine and James and Phyllis Wilkinson and submitted in support of this application a warranty deed (Joint Exh. 7).

8. On May 20, 1987, respondent received a request by Metropolitan to transfer the grazing preference at issue in this proceeding to Brooks and on June 23, 1987, respondent received from Brooks an application for this grazing preference. On September 7, 1987, respondent approved this transfer (Joint Exh. 8).

9. On June 23, 1987, respondent notified Forgey of its proposed decision to reject Forgey's application for grazing preference because the

lands offered by Forgey no longer qualified as base property and the preference applied for was currently under lease.

On June 23, 1987, respondent notified Brooks of its decision to cancel the grazing lease erroneously approved on March 8, 198[7]. (See Stipulated Fact No. 5) Brooks did not protest this decision which became final 15 days after Brooks received it (Joint Exh. 9).

10. On July 7, 1987, Forgey protested the proposed decision to reject its application.

11. On July 17, 1987, respondent notified Forgey of its final decision denying Forgey's application for grazing preference.

12. On August 19, 1987, Forgey appealed the respondent's final decision.

13. Metropolitan has at all time relevant to this proceeding held a Certificate of Authority to transact business as an insurance company in the State of Wyoming (Joint Exh. 10). Said authority is pursuant to the Wyoming Insurance Code, which is Title 26 of the Wyoming Code.

14. At no time during the period commencing March 19, 1985, and ending March 19, 1987, did Metropolitan or any person or entity authorized by Metropolitan graze livestock on the Federal lands in the Antelope Hills pasture.